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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th February 2007

No. 1715—li/1(B)-79/1992-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th January 2007 in Industrial Dispute Case No. 42 of 1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s Eastern Metal & Ferro Alloys Limited, Haridaspur, Dist. Jajpur and its workman Shri Tanumohan Khatua represented through Haridaspur Alloys Workers Union, Dhanmandal, Dist. Cuttack was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 42 OF 1993

Dated the 10th January 2007

Present :

Shri S. K. Mohapatra, o.s.j.s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of .. First Party—Management
M/s Eastern Metal and Ferro Alloys Limited
Haridaspur.

And

Their Workman .. Second Party—Workman
Shri Tanumohan Khatua represented
through the Haridaspur Alloys
Workers Union.

Appearances :

For the First Party—Management	.. Shri Prafulla Kar
<hr/>	
For the Second Party—Workman himself	.. Shri Tanumohan Khatua

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of M/s Eastern Metal and Ferro Alloys Limited, Haridaspur and their workman Shri Tanumohan Khatua represented through the Haridaspur Alloys Workers Union under Notification No. 8007-L.E., dated the 18th July 1985 vide Memo No. 4511(5)-L.E., dated the 17th April 1993 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :—

"Whether the termination of services of Shri Tanumohan Khatua, Assistant Operator by the management of M/s Eastern Metal and Ferro Alloys Limited with effect from the 19th November 1990 is legal and/or justified ? If not, to what relief he is entitled ?"

3. Shorn of all unnecessary details, the case of the workman as mentioned in his statement of claim is as follows :—

The workman was appointed by the management as Assistant Operator with effect from the 1st December 1984 on a monthly consolidated pay of Rs. 300 and subsequently he was placed in the revised grade of Rs. 520—55—740—60—920. On the 29th October 1990 the workman proceeded on leave after submitting necessary application to the management and subsequently he extended his leave with effect from the 30th October 1990 because of his illness. On the 19th November 1990 the workman reported for his duty along with his joining report and Medical Certificate. The Managing Director of the management did not accept the joining report and verbally stated that the workman had already been discharged from his service. The workman had not received any official communication in writing regarding such termination of service. The workman continued to report for duty at the factory gate of the management for entering into the factory premises. The termination of service of the workman by way of refusal of employment is arbitrary and is in violation of the principles of natural justice. No disciplinary proceeding had ever been initiated against the workman and he had never been given an opportunity to defend his case before his termination from service by way of refusal of employment. On these averments, the workman has claimed for reinstatement in service with full back wages.

4. By filing written statement, the management has contended that the workman had been appointed as Assistant Operator on temporary basis with effect from the 1st November 1984. The management suffered a major set back due to an explosion in the year 1986 and after such explosion the manufacturing unit of the company was closed for about a year and was revived in the year 1987. Due to heavy loss and non-availability of raw materials, etc. the management always required only 30 to 40 employees at a time. Since the workman was a casual labourer on temporary basis, his employment never exceeded 240 days at a time in any calendar year. The workman voluntarily choose to remain absent from his work after the 26th October 1990 and voluntarily abandoned his employment in the factory of the management

and therefore, there was no occasion for issuance of any charge-sheet or for initiation of any disciplinary proceeding against the workman. The management has contended that it is never a case of termination of service of the workman by way of refusal of employment by the management. The workman was duly informed to report back at factory as before but the workman never appeared at the factory gate to work in the factory of the management as casual labourer as before. The management repeatedly issued several letters to the workman and inspite of that the workman never reported for duty and therefore, it is a case of voluntarily abandonment of service on the part of the workman. The workman after abandonment of his service, was gainfully employed. On these averments, the management has sought for dismissal of the present case and has contended that the workman is not entitled to the relief sought for.

5. On the above stated pleadings of the parties, the following issues have been framed.

ISSUES

- (i) Whether the termination of services of the second party workman by the first party management with effect from the 19th November 1990 is legal and/or justified ?
- (ii) What relief, if any, the workman is entitled to ?

6. In the instant case the workman has examined himself as W. W. 1 and he in his evidence has stated that he joined in the factory of the management from the 1st November 1984 as an Assistant Operator vide Office Order, dated the 29th October 1984 on a consolidated monthly salary of Rs. 300. The xerox copy of the letter of appointment has been proved as Ext. 1. The Managing Director of the management has examined himself as M. W. 1. In the written statement filed by the management at Paragraph 6(e) the management has admitted that the workman was appointed as Assistant Operator on temporary basis with effect from the 1st November 1984 on a consolidated monthly salary of Rs. 300. Thus it is quite evident that the workman was under the employment of the management on a monthly salary basis and not as a casual worker to work as and when occasion arose. W. W. 1 has further stated that Ext. 2 is the xerox copy of the list of the workers of different sections working under the management and the said list came into effect from the 27th May 1985. Ext. 2 shows that the workman with effect from the 27th May 1985 was working in the Crushing Unit of the Company as an Operator. Ext. 3 is the xerox copy of the office order, dated the 5th February 1986 of the management regarding distribution of work shiftwise amongst the workers of the management. This also shows that on the 5th February 1986 the workman was working as an Operator under the management. Ext. 4 is the xerox copy of the notice issued by the Project Manager, dated the 22nd June 1985 requesting all the workers to attend general body meeting on the 23rd June 1985. This also shows that on the said date the workman had signed on such notice. Ext. 5 is the xerox copy of the office order, dated the 16th October 1989 of the management relating to revised consolidated scale of pay and this also shows that on the 26th October 1989 the workman was working under the management on a monthly pay scale of Rs. 520—55—740—60—920. The name of the workman finds place vide Sl. No. 16 of Ext. 5. In the cross-examination it is not challenged that Exts. 1 to 5 are fabricated documents but on the other hand it has only been questioned as to when the workman got the xerox copies of the documents. The workman however, could not reply that as to who had given the

xerox copies of the documents to him and when, but apparently the workman can not get all originals documents of the management, and when the authenticity of the xerox copies of the documents have not been challenged and it had not been conclusively proved that the documents are not the xerox copies of the original documents of the management it has to be accepted that the workman was working regularly on monthly salary basis under the management and he was not a casual worker as deposed to by M. W. 1. Considering the fact that the workman joined in his service on the 1st November 1984 and vide Ext. 5 on the 16th October 1989 he was given revised consolidated pay, it admits of no doubt that the workman (W. W. 1) was in continuous service within the meaning of Section 25-B of the Industrial Disputes Act, 1947 (herein after referred to as the I. D. Act).

The provision under Section 25-F of the Industrial Disputes Act is mandatory. It stipulates that no workman shall, who was in continuous service for not less than one year shall be retrenched from service without complying the provisions under Section 25-F of the Industrial Disputes Act. In the instant case the plea taken by the management that W. W. 1 was not in continuous service has already been disproved and there is no conclusive evidence that W. W. 1 himself abandoned his service. As regards his illness the workman has not only deposed orally but he has also proved the xerox copy of his representation Ext. 6 for reinstatement in service, xerox copy of the Medical Papers regarding his illness which compelled him to remain absent from duty. Admittedly the management in the instant case has not complied the mandatory provisions of Section 25-F of the Industrial Disputes Act and therefore, the action of the management in terminating the services of the workman by way of refusal to give work is throughly illegal and unjustified. Therefore, the workman is entitled to the relief of reinstatement in service with back wages till the date of his superannuation.

7. Hence Ordered :

That the termination of services of Shri Tanumohan Khatua, Assistant Operator by the management of M/s Eastern Metal and Ferro Alloys Limited with effect from the 19th November 1990 is illegal and unjustified. The workman Shri Khatua is entitled to the relief of reinstatement in service with full back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA

10-1-2007

Presiding Officer

Labour Court, Bhubaneswar

S. K. MOHAPATRA

10-1-2007

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government

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